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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13

14 JONAS HEMMER, individually and as
successor in interest to JOHN L.
15 HEMMER, Deceased; JH, by and
through her guardian ad litem Julie
16 Hemmer; LINDA HEMMER and
DENNIS HEMMER, individually,

17 Plaintiffs,
18

19 v.

20 COUNTY OF RIVERSIDE, Sheriff
CHAD BIANCO, Correctional Sergeant
21 ASHLEY RODRIGUEZ, Correctional
Deputies JONATHAN McKEITHEN,
22 CODY BRAND, JAMES PARKS and
LAURA VALDÉZ; and DOES 1-10,

23 Defendants.
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Case No. 5:22-CV-1247

COMPLAINT FOR DAMAGES

1. 42 U.S.C. § 1983 – Survival and Wrongful Death
2. 42 U.S.C. § 1983 – Deprivation Of Familial Relationship;
3. 42 U.S.C. § 1983 – Entity and Supervisory Liability;
4. Cal. Civ. Code § 52.1;
5. Negligence and Breach of Mandatory Duties

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. On July 21, 2021, Decedent John L. Hemmer (“Decedent”), a
3 pretrial detainee in the custody of the Riverside County Sheriff’s Department
4 (RCSD) at John Benoit Detention Center in Indio, California, was beaten to death
5 by his cellmate, Luke Hanchette. As of the time of filing of this complaint,
6 Hanchette is being prosecuted for John Hemmer’s murder, and the facts available to
7 Plaintiffs are limited. The following allegations are based primarily on Hanchette’s
8 preliminary hearing.

9 **JURISDICTION AND VENUE**

10 2. Plaintiffs are the children and parents of Decedent. They bring this
11 42 U.S.C. § 1983 civil action seeking damages for deprivations of constitutional
12 rights secured by the Fourteenth Amendment of the United States. Jurisdiction is
13 founded on 28 U.S.C. §§ 1331 and 1343. The state-law claims are so related to the
14 § 1983 claims that they form part of the same case and controversy and are therefore
15 within the Court’s supplemental jurisdiction under 28 U.S.C. § 1367.

16 3. Venue is proper in this Court under 28 U.S.C. § 1391(b) because all
17 incidents, events, and occurrences giving rise to this action occurred in the City of
18 Indio, County of Riverside, State of California, and within the Eastern Division of
19 the Central District of California.

20 **PARTIES**

21 4. Plaintiff Jonas Hemmer is Decedent’s son. He is an adult qualified
22 to bring suit. He brings this action individually and as his father’s successor in
23 interest under California Code of Civil Procedure § 377.32.

24 5. Plaintiff JH is Decedent’s daughter. She is an adult who is severely
25 developmentally disabled and as a result cannot bring suit on her own behalf. She
26 therefore appears through her mother and proposed guardian ad litem, Julie
27 Hemmer, Decedent’s ex-spouse. JH brings this action individually.
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1 6. Linda and Dennis Hemmer are Decedent's parents. They bring this
2 action individually.

3 7. Defendant County of Riverside (County) is a California general law
4 county operating as a local government entity and not an arm of the State of
5 California for Eleventh Amendment purposes. The County operates and manages
6 the RCSD, and together the County and the RCSD operate the Riverside County jail
7 system, which includes the John Benoit Detention Center in Indio.

8 8. Defendant Chad Bianco is the County Sheriff. As such he is the
9 supervisor, chief decisionmaker and ultimate policy maker for the RCSD. Plaintiffs
10 sue Sheriff Bianco in his individual capacity.

11 9. Defendant Ashley Rodriguez is a correctional sergeant assigned to
12 the John Benoit Detention Center, and was the direct supervisor of defendant
13 correctional deputies Jonathan McKeithen, Cody Brand, James Parks and Laura
14 Valdez during relevant times. Collectively these five named defendants are referred
15 to as the individual defendants.

16 10. The true names of Defendants Does 1-10 are unknown to Plaintiffs,
17 who therefore sues these defendants by fictitious names. Plaintiffs will seek leave to
18 amend this complaint to show the true names and capacities of these defendants
19 when they have been ascertained. Each fictitiously-named defendant is responsible
20 in some manner for the conduct and liabilities alleged herein.

21 11. At all relevant times, the individual defendants and Does 1-10 were
22 agents or employees of the County, the RCSD, or the John Benoit Detention Center.
23 To the extent they were independent contractors, the County and RCSD are
24 responsible for their actions under principles of non-delegable duties. At all relevant
25 times, the individual and Doe defendants acted under color of state law and within
26 the course and scope of their employment. All individual and Doe defendants
27 engaged in, integrally participated in, and failed to intervene to prevent the conduct
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1 of which Plaintiffs complain, and engaged in other wrongful acts or omissions as
2 alleged below.

3 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

4 12. Plaintiffs timely presented their claim for damages pursuant to
5 Section 910 of the California Government Code on January 14, 2022. The Claim
6 was denied on January 20, 2022. This lawsuit is timely brought within six months of
7 the rejection of that claim.

8 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

9 13. John Hemmer had been a pretrial detainee in RSO custody since
10 February 2019. Over a period of almost two-and-a-half years, he was housed with
11 various cellmates without any issues while patiently waiting for the criminal charges
12 against him to be resolved.

13 14. Doe defendants responsible for housing inmates at the John Benoit
14 Detention Center in Indio, California, assigned Hanchette as Decedent's cellmate,
15 deliberately indifferent to the unreasonable risk of severe harm Hanchette posed to
16 Decedent. Hanchette had two convictions for battery, including one with a great
17 bodily injury enhancement, and was in custody on a new charge of battery causing
18 great bodily injury. Hanchette was well known by jail staff prior to the murder for
19 his violence and unpredictability. He could not safely be housed with other inmates.
20 He has been housed in administrative segregation since murdering John Hemmer.

21 15. The staff at John Benoit Detention Center knew that Hanchette
22 posed unreasonable risks to other inmates. Correctional Deputies Jonathan
23 McKeithen, Cody Brand, James Parks were assigned to 1 West, the housing unit in
24 which Decedent and Hanchette were housed. Knowing of the extraordinary risks
25 that Hanchette posed, McKeithen, Brand and Parks were constitutionally obligated
26 to exercise due vigilance to protect Decedent from harm.

1 16. Decedent was last seen alive on the evening of July 20, in the
2 1 West Pod C Dayroom. After lights out that evening he was locked in Cell 44, on
3 the lower tier, with Hanchette.

4 17. Because of the deliberate indifference of Correctional Deputies
5 McKeithen, Brand and Parks, including their failure to conduct timely and adequate
6 cell checks as required by state law and regulations, Hanchette was able to bully and
7 assault Decedent in his cell, forcing him to strip naked and taking his mattress,
8 among other things.

9 18. Shortly after 4:00 a.m. on July 21, 2021, under the supervision of
10 Defendant Correctional Deputies McKeithen, Brand and Parks, who in turn were
11 supervised by a Sergeant Doe, the 16 Pod C inmates on the lower tier were allowed
12 out of their cells to get their bagged breakfasts and bring them back to their cell.
13 Only Hanchette emerged from Cell 44, and he took two breakfasts. Defendant
14 Correctional Deputies McKeithen, Brand and Parks were deliberately indifferent to
15 the clear warning of danger to Decedent when he did not come out of his cell to get
16 his breakfast. None checked Cell 44 to see why Decedent did not leave his cell.
17 Moreover, Defendant Correctional Deputies McKeithen, Brand and Parks allowed
18 Hanchette to get a metal crutch from another inmate in another cell although
19 Hanchette had no medical condition that required use of a crutch. The only purpose
20 of the crutch for Hanchette was to use as a weapon to assault Decedent. Defendant
21 Correctional Deputies McKeithen, Brand and Parks were deliberately indifferent to
22 Decedent's welfare when they allowed Hanchette to take the crutch into Cell 44.

23 19. Following breakfast, there were at least two required cell checks
24 before Defendant Correctional Deputies McKeithen, Brand and Parks went off duty
25 at 6:00 a.m. During this time, Sgt. Rodriguez came on duty and became the direct
26 supervisor of the correctional deputies assigned to 1 West. These checks either did
27 not take place at all or were grossly inadequate and deliberately indifferent to
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1 Decedent's health and safety, as this was most likely the time period during which
2 Hanchette beat Mr. Hemmer to death with the crutch.

3 20. After the shift change, at around 6:40 a.m., Defendant Correctional
4 Deputy Laura Valdez let Hanchette out of Cell 44 for a court appearance. He walked
5 out carrying the crutch, not using it to walk, apparently with soap or shampoo Gel
6 smeared on it to clean off the blood and human tissue. The cell was flooded with
7 water. Still no one checked the cell. Defendant Valdez falsely reported that the 6:40
8 a.m. cell check occurred. Had there been a check, Mr. Hemmer would have been
9 found an hour sooner and, on information and belief, would have survived the
10 assault.

11 21. Defendant Correctional Deputy Valdez discovered Mr. Hemmer,
12 naked, beaten to death, on the Cell 44 floor during a routine safety check at about
13 7:45 a.m. He was subsequently pronounced dead in Dayroom C.

14 22. At least two of the three surveillance cameras for Dayroom C were
15 not functioning properly due to the deliberate indifference of all defendants.

16 23. As to the supervisory defendants, Sheriff Chad Bianco and
17 Correctional Sergeant Ashley Rodriguez, both directed their subordinates in the acts
18 and failures to act that deprived Decedent and Plaintiffs of their Fourteenth-
19 Amendment rights. Both set in motion a series of acts by their subordinates, or
20 knowingly refused to terminate a series of acts by their subordinates, that they knew
21 or reasonably should have known would cause the subordinates to deprive Decedent
22 and Plaintiffs of these rights.

23 24. The supervisory defendants, Sheriff Chad Bianco and Correctional
24 Sergeant Ashley Rodriguez, knew that their subordinates were engaging in these
25 acts and knew or reasonably should have known that the subordinates' conduct
26 would deprive Decedent and Plaintiffs of these rights; and the supervisory
27 defendants failed to act to prevent their subordinates from engaging in such conduct.
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1 law in their individual and personal capacities, deprived John Hemmer, a pretrial
2 detainee, of the rights, privileges, and immunities secured by the Fourteenth
3 Amendment to the United States Constitution by failing to protect him from
4 violence at the hands of his cell mate, and by subjecting him to a substantial risk of
5 serious harm to which Defendants were both objectively and subjectively
6 deliberately indifferent. The individual and Doe Defendants were objectively
7 deliberately indifferent to the substantial risk of serious harm that Hanchette,
8 especially once he armed himself with a metal crutch, posed to Decedent, who died
9 as a result. Upon information and belief, each of the individual and Doe defendants
10 integrally participated or failed to intervene in the complained-of conduct of the
11 others.

12 31. Despite knowledge of the substantial risk of severe harm Hanchette
13 posed to Decedent, especially after arming himself with a metal crutch, the
14 individual and Doe defendants did not take reasonable available measures to protect
15 John Hemmer, even though reasonable officers in the circumstances would have
16 appreciated the high degree of risk involved—making the consequences of the
17 Defendants’ conduct obvious.

18 32. The individual and Doe defendants subjected Decedent to their
19 wrongful conduct, depriving Plaintiffs and Decedent of rights described herein,
20 knowingly, maliciously, and with conscious and reckless disregard for the rights and
21 safety of Plaintiffs and Decedent.

22 33. As a direct and proximate result of Defendants’ acts and omissions
23 as set forth above, John Hemmer was murdered in his cell and Plaintiffs sustained
24 injuries and damages as set forth above.

1 **SECOND CLAIM FOR RELIEF**

2 **Fourteenth Amendment—Interference with Familial Relationship**

3 **(42 U.S.C. § 1983)**

4 (by all Plaintiffs against Individual and Doe Defendants)

5 34. The foregoing allegations are incorporated as if re-alleged herein.

6 35. Plaintiffs have rights under the Fourteenth Amendment to their
7 parent/child relationships with John Hemmer that were infringed by his death.

8 36. The acts of the individual and Doe defendants deprived Plaintiffs of
9 their particular rights under the United States Constitution in a manner that
10 constituted deliberate indifference to the substantial danger of serious harm to John
11 Hemmer from his cellmate Hanchette. As a result, John Hemmer lost his life.

12 37. The conduct of the individual and Doe defendants was malicious,
13 oppressive and in reckless disregard of Plaintiffs' rights, entitling Plaintiffs to
14 punitive damages.

15 38. Upon information and belief, each of the individual and Doe
16 defendants integrally participated in or failed to intervene in the complained-of
17 conduct of the others.

18 39. As a direct and proximate result of Defendants' acts and omissions
19 as set forth above, John Hemmer was murdered in his cell and Plaintiffs sustained
20 injuries and damages as set forth above.

21 **THIRD CLAIM FOR RELIEF**

22 42 U.S.C. § 1983 – Entity and Supervisory Liability

23 (All Plaintiffs against Defendants County, RCSD and Bianco)

24 40. The foregoing allegations are incorporated as if re-alleged herein.

25 41. Plaintiffs are informed and believe, and on that basis allege, that the
26 County and RCSD, and their decision makers, including but not limited to Sheriff
27 Chad Bianco, with deliberate indifference, gross negligence, and reckless disregard
28 to the safety, security, and constitutional and statutory rights of Decedent and all

1 persons similarly situated, maintained, enforced, tolerated, permitted, acquiesced in,
2 and applied policies, practices, customs and usages of, among other things, each of
3 the following:

4 a. Allowing jailors to not perform the adequate and timely safety
5 checks required by Title 15 of the California Code of Regulations.

6 b. Failing to adequately train, supervise and control employees in
7 the proper classification and supervision of inmates to protect against inmate
8 on inmate violence required by Title 15 of the California Code of
9 Regulations.

10 c. Failing to adequately train, supervise and control employees to
11 protect against signs of bullying and assaultive behavior by inmates.

12 d. Failing to adequately train, supervise and control employees that
13 they should not allow inmates to take potential weapons such as metal
14 crutches into cells.

15 e. Failing to maintain surveillance cameras in jails, including the
16 surveillance cameras in Dayroom C.

17 f. Failing to adequately investigate and, when appropriate,
18 discipline or retrain correctional deputies and supervisors involved in
19 misconduct.

20 g. Condoning and encouraging correctional deputies supervisors in
21 the belief that they can violate the rights of persons such as Decedent and
22 Plaintiffs with impunity, and that such conduct will not adversely affect their
23 opportunities for promotion and other employment benefits.

24 h. Failing to analyze critical incidents such as this one and take
25 appropriate corrective action to prevent recurrences.

26 The foregoing list is illustrative and not exhaustive.

27 42. Defendants County, RCSD and Bianco, acting in his individual
28 capacity, promulgated, tolerated and applied, the policies, practices and usages

1 alleged above, among others, which were a moving force that deprived Decedent of
2 rights, privileges, and immunities secured by the Fourteenth-Amendment right to
3 secure from inmate-on -inmate violence, as alleged above.

4 43. Defendant Bianco disregarded the known or obvious consequence
5 that the training deficiencies and omissions would cause his subordinates to violate
6 Decedent and Plaintiffs' constitutional rights; and that deficiency or omission
7 actually caused his subordinates to deprive Decedent and Plaintiffs of their
8 constitutional rights.

9 44. As a result of the policies, customs, practices and decisions, and
10 training deficiencies alleged above, Decedent and Plaintiffs suffered damages as
11 alleged above.

12 **FOURTH CAUSE OF ACTION**

13 (Cal. Civil Code § 52.1 - Bane Act)

14 (Plaintiffs Jonas Hemmer and JH Against All Defendants)

15 45. The foregoing allegations are incorporated as if re-alleged herein.

16 46. By their acts, omissions, customs, and policies, Defendants, acting
17 in concert, as described above, and with threat, intimidation, and coercion, violated
18 Plaintiffs' and Decedent's rights under Cal. Civil Code § 52.1 and the following
19 clearly established rights under the laws and constitutions of the United States and
20 California:

21 a. Decedent's right to protection and to be free from unsafe conditions
22 of confinement, as secured by the Fourteenth Amendment to the United
23 States Constitution and the California Constitution, Article 1, Sections 17
24 and 24;

25 b. Plaintiffs' right to be free from wrongful government interference
26 with familial relationships and Plaintiffs' right to companionship, society,
27 and support with the Decedent, as secured by the Fourteenth Amendment
28 and state constitutional provisions and laws;

1 c. The right to enjoy and defend life and liberty; acquire, possess, and
2 protect property; and pursue and obtain safety, happiness, and privacy, as
3 secured by the California Constitution, Article 1, Section 1; and

4 d. The right to protection from bodily restraint, harm, or personal insult,
5 as secured by California Civil Code § 43.

6 47. Defendants had the specific intent to violate John Hemmer's
7 rights, and they violated his rights through their own intentional and volitional
8 conduct, and with deliberate indifference to the rights and safety of Decedent. Their
9 deliberate indifference, in and of itself constitutes threat, intimidation, or coercion
10 under the Bane Act as interpreted by courts, and their willful conduct with
11 knowledge that the deprivations of Decedent's rights would occur, or with reckless
12 disregard for those consequences establishes the requisite specific intent for a Bane
13 Act violation.

14 48. To the extent this claim is based on a violation of Decedent's rights,
15 it is asserted as a survival claim. To the extent that the violations of rights were done
16 to Plaintiffs, it is asserted by them individually and as a wrongful death claim. To
17 the extent the violations were done to both Decedent and Plaintiffs, it is asserted as
18 an individual claim, survival and wrongful death.

19 49. As a direct and proximate result of Defendants' violation of
20 California Civil Code § 52.1 and of Plaintiffs' and Decedent's rights under the
21 United States and California Constitutions and law, Plaintiffs sustained injuries and
22 damages, and against each Defendant named in this Count, and are entitled to
23 damages as set forth above, and punitive damages against all individual Defendants,
24 but not the County or RCSD, including all damages and penalties allowed by
25 California Civil Code §§ 52 and 52.1 and California law, three times actual
26 damages, and attorneys' fees.

FIFTH CLAIM FOR RELIEF

Negligence and Breach of Mandatory Duty

(Plaintiffs Jonas Hemmer and JH against All Defendants)

50. The foregoing allegations are incorporated as if re-alleged herein.

51. The individual defendants and Does 1-10 had a duty to conform their conduct to that of reasonably careful and prudent corrections officers, as such duties relate to the prevention and mitigation of harm to detainees.

52. In committing the above-described acts and omissions, the conduct of the individual defendants and Does 1-10 fell below that of reasonably careful and prudent corrections officers.

53. The agents and employees of Defendants County and RCSD violated mandatory duties imposed on them by Title 15 of the California Code of Regulations, which provides minimum standards for local detention facilities such as the John Benoit Detention Center. These minimum standards that were violated include those governing classification of inmates to protect inmates from violent, predatory inmates such as Hanchette, and standards requiring meaningful hourly safety checks.

54. As a result of the negligence of the individual and Doe defendants, and the breach of mandatory duties, as alleged above, John I. Hemmer was brutally murdered by his cellmate.

55. The conduct of the individual defendants and Does 1-10, and each of them, and the breach of mandatory duties, were substantial factors in causing harm to Plaintiff.

56. The County is vicariously liable for the wrongful acts of the individual and Doe defendants pursuant to section 815.2(a) of the California Government Code, which provides that a public entity is liable for the injuries caused by its employees within the scope of their employment if the employee's act would subject him or her to liability.

1 57. Plaintiffs Jonas Hemmer and JH seek survival and wrongful death
2 damages, compensatory damages, punitive damages, and attorney fees under this
3 claim, which they bring individually and as successors-in-interest to John Hemmer.
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5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs prays for relief and requests entry of judgment
8 in his favor and against all defendants as follows:

9 A. All general damages, including survival and wrongful death
10 damages, in amounts according to proof;

11 B. Special damages in amounts according to proof;

12 C. Exemplary and punitive damages against the individual and Doe
13 defendants in amounts according to proof;

14 D. Costs of suit;

15 E. Attorney fees under 42 U.S.C. § 1988 and applicable state law
16 provisions; and

17 F. Such other relief as may be warranted or as is just and proper.

18 DATED: July 17, 2022

LAW OFFICE OF THOMAS C. SEABAUGH

19
20 By /s Thomas C. Seabaugh

21 Thomas C. Seabaugh
22 Attorneys for Plaintiffs
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

DATED: July 17, 2022

LAW OFFICE OF THOMAS C. SEABAUGH

By s/ Thomas C. Seabaugh
Thomas C. Seabaugh
Attorneys for Plaintiffs